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REVIEW OF THE EFFICIENCY OF THE ADMINISTRATIVE AND FINANCIAL FUNCTIONING OF THE UNITED NATIONS

Jurisdictional and procedural mechanisms for the proper management of resources and funds of the United Nations

Report of the Secretary-General

Addendum

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REPLIES RECEIVED FROM GOVERNMENTS

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* A/49/50.

BRAZIL

[Original: English]

[18 March 1994]

1. The Government of Brazil welcomes General Assembly resolution 48/218 of 23 December 1993, in which it was decided that an hoc intergovernmental working group of experts in the legal and financial fields would be established to study effective measures for recovery of misappropriated United Nations funds and the criminal prosecution of those responsible.

2. This timely initiative responds to an increasing call to address a problem that is drawing a great deal of attention world wide and that might have a damaging impact on the image of the Organization. Nevertheless, as it was very aptly put in the preamble of section III of the resolution, the search for remedies to alleged cases of either fraud or misappropriation of funds should not impinge upon due process of law and full respect for the rights of the individuals concerned, including the right of defence.

3. As a first set of considerations pertaining to this initiative, it is useful to point out the fact that the United Nations, as a treaty-based Organization, should necessarily perform the tasks assigned to it in the national jurisdictions of host States. Agreements on privileges and immunities have been set up in order to avoid the Organization being subject to national jurisdictions. As a consequence, various degrees of jurisdictional immunity are granted to the Organization and to those who act on its behalf. As unilateral renunciation of the immunities of officials suspected of wrongdoing with a view to ensuring effective prosecution appears to be a very radical step, alternative approaches should be sought. It is the view of the Government of Brazil that the matter deserves in-depth consideration by the Sixth Committee, as it has a bearing on complex problems related to international law.

4. The above considerations should not prevent the ad hoc intergovernmental working group of experts from devising procedures and mechanisms that would lead to the settling of administrative questions related to financial and budgetary matters. In this respect, the Government of Brazil considers that it is worth exploring the possibility of expanding the prerogatives and mandates of existing bodies like the Administrative Tribunal that could provide the necessary framework and support infrastructure to administer cases of financial wrongdoing in the Organization.